



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 21 2011

James J. Leonard, Jr., Esq.
Leonard Law Group, L.L.C.
1200 Atlantic Avenue
Suite 201
Atlantic City, NJ 08401

RE: MUR 6475
Andrew J. McCrosson, Jr.

Dear Mr. Leonard:

On June 16, 2011, the Federal Election Commission ("the Commission") notified you of a complaint against your client, Andrew J. McCrosson, Jr., alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on October 18, 2011, found that there is reason to believe your client, Andrew J. McCrosson, Jr., knowingly and willfully violated 2 U.S.C. §§ 432(c), 434(b) and 439a(b), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you or your client believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you and your client have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,


Cynthia L. Bauerly
Chair

Enclosure
Factual and Legal Analysis

CONFIDENTIAL

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
3

4 **RESPONDENT:** Andrew J. McCrosson, Jr.

MUR: 6475

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7 **I. INTRODUCTION**

8 This matter arose from a complaint filed by LoBiondo for Congress and its treasurer
9 ("the Committee") regarding unauthorized disbursements totaling approximately \$458,000 that
10 Andrew J. McCrosson, Jr., the Committee's former treasurer, issued to himself in or about 1995
11 through 2010. According to the complaint, McCrosson omitted the unauthorized disbursements
12 from disclosure reports that he filed with the Federal Election Commission ("Commission") on
13 behalf of the Committee over the course of 15 years, and he attempted to disguise his theft by
14 filing false disclosure reports with the Commission that misrepresented the Committee's cash-
15 on-hand balances. Based on the available information, the Commission found reason to believe
16 that Andrew J. McCrosson, Jr. knowingly and willfully violated 2 U.S.C. §§ 432(c), 434(b) and
17 439a(b).

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Factual Background**

20 Congressman Frank A. LoBiondo has represented New Jersey's Second Congressional
21 District since 1994. LoBiondo for Congress is his authorized campaign committee. Available
22 information indicates that the Committee discovered the embezzlement after McCrosson, a
23 certified public accountant, was replaced as treasurer in 2010. McCrosson had accepted
24 employment in a different part of the state, which was going to affect his availability to continue
25 working for the Committee. It appears that during the transition to the new treasurer,

1 McCrosson became evasive when he was asked to turn over the Committee's financial records.
2 Once the new treasurer received some of the Committee's records from McCrosson in November
3 2010, he discovered checks that McCrosson had written to himself without the authority do so,
4 discrepancies in the cash-on-hand balances that had been disclosed to the Commission, and that
5 McCrosson had created documents to make it appear that the Committee had a certificate of
6 deposit with a value of about \$460,000, when in fact, no such account existed. According to the
7 complaint, which included copies of the Criminal Information filed against McCrosson with the
8 U.S. District Court for the District of New Jersey and the plea agreement between the U.S.
9 Attorney's Office and McCrosson, the Committee reported the embezzlement to the Department
10 of Justice, which subsequently prosecuted McCrosson. McCrosson pled guilty on March 4,
11 2011, to wire fraud and conversion of campaign funds, in violation of 18 U.S.C. § 1343 and
12 2 U.S.C. §§ 439a(b) and 437g(d)(1)(A)(i), and was sentenced on September 7, 2011 to
13 30 months in prison, 100 hours of community service, 3 years of supervised release, and he is
14 subject to debt and occupation restrictions and was ordered to pay \$458,000 in restitution.

15 McCrosson served as the Committee's treasurer and custodian of records from the early
16 1990s until August 2010. McCrosson was the only person tasked with completing and filing the
17 Committee's disclosure reports with the Commission, maintained possession of the Committee's
18 financial records, and was the sole signatory on the Committee's bank accounts. Criminal
19 Information at 2-3. The Committee did not perform "periodic reviews or audits of the
20 [Committee] records or accounting practices associated with the financial activities of the
21 campaign committee other than the filing of the required reports with the FEC." *Id.* at 3.
22 McCrosson performed his treasurer duties chiefly from a home office. *Id.*

1 From about 1995 through August 2010, McCrosson wrote checks to himself from the
2 Committee's bank account without authorization to pay for personal expenses. Copies of checks
3 obtained by the Commission show that McCrosson endorsed and deposited them into his bank
4 account. The Criminal Information specifically cites payments McCrosson made, including
5 payments for "a federal income tax lien, home mortgage payments, college tuition payments for
6 his children, and other living expenses," using Committee funds. Information at 5. Further,
7 McCrosson disguised the authorized disbursements by omitting them from the Committee's FEC
8 disclosure reports and filing false reports with the Commission that included incorrect cash-on-
9 hand balancees. *Id.* at 6. According to the Criminal Information, the Committee's cash-on-hand
10 was misreported to the Commission in the last five years as follows:

REPORT	DATE FILED	CASH-ON- HAND (FEC REPORTS)	CASH-ON- HAND (BANK STATEMENTS)	CASH-ON-HAND DISCREPANCY
2010 July Quarterly	July 13, 2010	\$1,170,976.14	\$636,257.15	\$534,718.99
2009 Year End	Jan. 28, 2010	\$1,122,460.53	\$603,763.80	\$518,696.73
2008 Year End	Jan. 29, 2009	\$1,177,314.59	\$712,923.69	\$464,390.90
2007 Amended Year End	June 13, 2008	\$1,395,321.59	\$949,075.65	\$446,245.94
2006 Year End	Jan. 26, 2007	\$1,332,006.63	\$1,079,954.46	\$252,052.17

11 In response to the complaint, McCrosson's counsel indicates that based on the factual
12 record, which includes the guilty plea, "I see no reason to supplement the record." Additionally,
13 McCrosson's counsel has indicated that his client intends to fully cooperate with the
14 Commission.
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1 **B. Legal Analysis**

2 The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits any
3 person from converting contributions to a Federal candidate for personal use. 2 U.S.C.
4 § 439a(b)(1). "Personal use" means any use of funds in a campaign account of a federal
5 candidate to fulfill a commitment, obligation, or expense of any person that would exist
6 irrespective of the candidate's campaign duties. See 2 U.S.C. § 439a(b)(2). The Act and
7 Commission regulations set forth some *per se* examples of personal use, including mortgage
8 payments, tuition payments, noncampaign-related automobile expenses, and health club dues,
9 among others. See 2 U.S.C. § 439a(b)(2)(A)-(I); see also 11 C.F.R. § 113.1(g).

10 In this matter, McCrosson wrote unauthorized checks to himself from the Committee's
11 bank accounts for personal expenses, including payments for a "federal income tax lien, home
12 mortgage payments, college tuition payments for his children, and other living expenses,"
13 expenses which existed irrespective of the candidate's election campaign. Information at 5. The
14 available information indicates that McCrosson wrote checks to himself, endorsed them
15 (including "for deposit only" endorsements on the reverse), and deposited the unauthorized
16 Committee checks into his personal bank account.

17 According to the Commission's *Statement of Policy Regarding Treasurers Subject to*
18 *Enforcement Proceedings*, a former treasurer may be named as a respondent in his or her
19 personal capacity when it appears that he or she, while serving as treasurer, may have violated
20 obligations imposed by the Act or regulations, and where the violation was knowing and willful.
21 70 Fed. Reg. 3 (January 3, 2005). See MUR 6179 (Christopher Ward), MUR 5610 (Earl Allen
22 Haywood), MUR 5721 (Lockheed Martin), MUR 5971 (Jennifer Adams). Under the Act, a
23 treasurer is required to accurately keep an account of and report disbursements. See 2 U.S.C.

1 §§ 432(c)(5), 434(b)(4) and (6). Committee treasurers are also personally responsible for the
2 timely and complete filing of reports and statements required by the Act and for the accuracy of
3 any information or statement contained in it. 11 C.F.R. § 104.14(d). In this matter, McCrosson
4 wrote checks from the Committee's account to himself for his own personal use over the course
5 of fifteen years in his capacity as treasurer of the Committee and then failed to report those
6 disbursements and filed false reports with the Commission on behalf of the Committee.
7 Consequently, the Commission is making findings as to Andrew J. McCrosson, Jr. in his
8 personal capacity for his actions while serving as treasurer of the Committee.

9 The Act also addresses violations that are knowing and willful. *See* 2 U.S.C.
10 § 437g(a)(5)(B). The knowing and willful standard requires knowledge that one is violating the
11 law. The phrase "knowing and willful" indicates that "acts were committed with full knowledge
12 of all of the relevant facts and a recognition that the action is prohibited by law..." 122 Cong.
13 Rec. H3778 (daily ed. May 3, 1976); *see also* *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101-02
14 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (noting that a "willful" violation includes "such
15 reckless disregard of the consequences as to be equivalent to a knowing, conscious, and
16 deliberate flaunting of the Act," but concluding on the facts before it that this standard was not
17 met) (*cited in* *National Right to Work Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983)).
18 An inference of knowing and willful conduct may be drawn "from the defendant's elaborate
19 scheme for disguising" his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th
20 Cir. 1990). The evidence need not show that the defendant "had specific knowledge of the
21 regulations" or "conclusively demonstrate" a defendant's "state of mind," if there are "facts and
22 circumstances from which the jury reasonably could infer [the defendant] knew her conduct was
23 unauthorized and illegal." *Id.* at 213 (*quoting* *United States v. Bordelon*, 871 F.2d 491, 494 (5th

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5 Therefore, the Commission found reason to believe that Andrew J. McCrosson, Jr.
6 knowingly and willfully violated 2 U.S.C. §§ 432(c), 434(b), and 439a(b).